D.B.CIVIL SPECIAL APPEAL (W) N0. 569/2006
Fakruddin v. Om Prakash & ors.

Date of order : 11.04.2007

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE GOVIND MATHUR

Shri Suresh Shrimali for the appellant
Shri M.S.Panwar for respondent no.1

By the order impugned in the writ petition the trial court allowed plaintiff's application to lead rebuttal evidence. The writ petition against the said order having been dismissed, the defendant has come to this Court.

Case of the appellant is that the order is contrary to the provisions of Order XVIII rule 3 C.P.C. Rule 3 of Order XVIII provides that where there are several issues and burden of proving some of them lies on the other party, the party beginning may either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party, and in the latter case the party beginning may produce evidence on those issues after the other party has produced all his evidence and the other party may then reply on the evidence so produced by the party beginning but the party beginning will be entitled to reply the general issues. On a bare reading it is manifest that the rule lays down sequence in which evidence is to be led by the parties. The law relating to procedure, it is well known, is hand maid of justice. It is not the end by itself. The

trial court having exercised its discretion in favour of the plaintiff – with which the learned Single Judge did not interfere, we are not inclined to interfere with the order. Any interference will amount to shutting out evidence which may not be in the interest of justice.

The appeal is dismissed.

(GOVIND MATHUR) J. (S.N.JHA), C.J

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